



# Department of Justice

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**STATEMENT OF THE DEPARTMENT OF JUSTICE ANTITRUST DIVISION**  
**ON ITS DECISION TO CLOSE ITS INVESTIGATION OF**  
**CHICAGO MERCANTILE EXCHANGE HOLDINGS INC.'S**  
**ACQUISITION OF CBOT HOLDINGS INC.**

***Investigation Finds That Combination Not Likely  
to Substantially Reduce Competition***

WASHINGTON — The Department of Justice's Antitrust Division issued the following statement today after announcing the closing of its investigation into the proposed acquisition of CBOT Holdings Inc. by Chicago Mercantile Exchange Holdings Inc.:

"After an extensive investigation of both the Chicago Mercantile Exchange's (CME) proposed acquisition of CBOT and the 2003 agreement under which CME provides clearing services to CBOT, the Antitrust Division determined that the evidence does not indicate that either the transaction or the clearing agreement is likely to reduce competition substantially. More specifically, the Division determined that although the two exchanges account for most financial futures (and in particular, interest rate futures) traded on exchanges in the United States:

- their products are not close substitutes and seldom compete head to head, but rather provide market participants with the means to mitigate different risk; and
- they are, absent the merger, unlikely to introduce new products that compete directly with the other's entrenched products, in part due to the difficulty of overcoming an incumbent exchange's liquidity advantage in an established futures contract.

"The Division also looked carefully at whether the combination would lead to less innovation and fewer new products. While the evidence suggests that competition between CME and CBOT has, at times, provided some incentive for them to develop and offer new products, it does not indicate that continued innovation depends on competition between the parties. Rather, the evidence indicates that the two principal impetuses for innovation have been, and will continue to be, the prospect of winning business from the over-the-counter market and the potential to offer products that the OTC community can use to hedge the risk associated with its activities.

“Finally, the Division investigated whether the combination might foreclose entry by other exchanges into financial futures as a result of the integration of virtually all financial future contracts into a single clearinghouse. The evidence indicates that neither the clearing agreement nor the transaction will foreclose entry by other exchanges. Indeed, the New York Stock Exchange, in connection with its acquisition of Euronext.liffe, recently announced its intention to offer futures products, and the Intercontinental Exchange (ICE), in connection with its bid to purchase control of CBOT, has publicly stated its intent to offer interest rate futures regardless of whether its bid succeeds.

“In connection with its investigation, the Division relied on the Commodities Futures Trading Commission (CFTC) as a resource concerning the nature and regulation of futures markets. The information the CFTC provided was invaluable in helping the Division understand current regulatory policy, and the Division looks forward to working with the CFTC on an on-going basis to ensure competition in futures markets.”

The Division provides this statement under its policy of issuing statements concerning the closing of investigations in appropriate cases. This statement is limited by the Division’s obligation to protect the confidentiality of certain information obtained in its investigations. As in most of its investigations, the Division’s evaluation has been highly fact-specific, and many of the relevant underlying facts are not public. Consequently, readers should not draw overly broad conclusions regarding how the Division is likely in the future to analyze other collaborations or activities, or transactions involving particular firms. Enforcement decisions are made on a case-by-case basis, and the analysis and conclusions discussed in this statement do not bind the Division in any future enforcement actions. Guidance on the Division’s policy regarding closing statements is available at: <http://www.usdoj.gov/atr/public/guidelines/201888.htm>.

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